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**From:** VanOrden, James  
**Sent:** Wed 9/11/2013 12:54:54 PM  
**Subject:** FW: Harrisburg Patriot-News (8-11) Attorney general files criminal charges against Marcellus gas drilling company

## Ex. 5 - Attorney Client

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**Sent:** Wednesday, September 11, 2013 7:52 AM

**To:** VanOrden, James; Mulkey, Marcia; Smith, William (Region 3); Sternberg, David; Mohollen, Laura; Ryan, Daniel; McLeod, David; duteau, helen; White, Terri-A

**Subject:** Harrisburg Patriot-News (8-11) Attorney general files criminal charges against Marcellus gas drilling company

## Attorney general files criminal charges against Marcellus gas drilling company

By [Donald Gilliland](#) | [dgilliland@pennlive.com](mailto:dgilliland@pennlive.com)

Attorney General Kathleen Kane on Tuesday afternoon filed criminal charges against a Pennsylvania subsidiary of ExxonMobil for illegally discharging more than 50,000 gallons of toxic wastewater from a Marcellus Shale gas well site in Penn Township, Lycoming County. □ □

XTO Energy Inc., of Indiana, Pa., was charged after evidence and testimony was presented to a statewide investigating grand jury, which recommended the criminal charges be filed, according to a news release from Kane's office.

XTO issued a news release shortly after Kane, indicating it would challenge the charges because they were "unwarranted and legally baseless because neither XTO nor any of its employees intentionally, recklessly or negligently discharged produced water on the site."

According to the attorney general, the grand jury found that XTO hired a company to recycle wastewater at its Marquardt site in Lycoming County from Nov. 4, 2010, through Nov. 11, 2010.

After that one-week period, XTO directed the company to remove its processing equipment from the site and transport it to another XTO well site in West Virginia. However, XTO allegedly continued to transport and store gas well wastewater at the Marquardt site despite not having the proper equipment on site to safely store or process it.

The illegal discharge of gas well wastewater was discovered on Nov. 16, 2010, when an inspector with the Pennsylvania Department of Environmental Protection made an unannounced visit to the Marquardt site, according to the attorney general.

According to the grand jury, during that visit the DEP inspector discovered that a rear discharge valve on a storage tank was opened and a drain plug removed, causing gas well wastewater to flow out of the storage tank onto the ground. There also was evidence of prior wastewater discharges from other storage tanks at the Marquardt site.

The grand jury found that between Nov. 12, 2010, and Nov. 16, 2010, more than 93,000 gallons of wastewater were transported to and stored at the Marquardt site, of which approximately 57,000 gallons were unaccounted for following the spill, according to the news release.

Kane said the toxic wastewater flowed into and polluted an unnamed tributary of Sugar Run. As a result of the spill, DEP required more than 3,000 tons of contaminated soil to be excavated and removed from the Marquardt site

XTO allegedly failed to place a spill containment system under any of the storage tanks at the Marquardt site; failed to lock or otherwise secure any of the storage tanks on site; and failed to utilize any security measures to prevent unauthorized individuals from accessing the Marquardt site.

XTO Energy Inc. is charged with five counts of unlawful conduct under the Clean Streams Law and three counts of unlawful conduct under the Solid Waste Management Act.

XTO responded in its news release, saying, "The criminal charges filed by the Attorney General are unprecedented and an abuse of prosecutorial discretion. There was no intentional, reckless, or negligent misconduct by XTO. The incident did not result in significant or lasting environmental harm. Charging XTO under these circumstances could discourage good environmental practices,

such as recycling. The action tells oil and gas operators that setting up infrastructure to recycle produced water exposes them to the risk of significant legal and financial penalties should a small release occur."

The XTO news release said the company "has already agreed with federal authorities on reasonable civil penalties and preventative steps to avoid future accidents of this type. Without admission of liability, on July 18, 2013, a consent decree regarding the discharge was signed between XTO and the U.S. Department of Justice and the U.S. Environmental Protection Agency. The Department of Justice conducted a full investigation for more than a year and concluded that criminal charges were not warranted. An investigation by the Pennsylvania Department of Environmental Protection is ongoing."

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